

CHAPTER 4 TEMPORARY RESTRAINING ORDERS (TRO's)

Rule 5.4.1

Appropriate Forms and Filing with the Sheriff

When seeking a TRO pending a court hearing, the current forms adopted by the Judicial Council must be used. In all cases, including cases which are not filed under the Domestic Violence Protection Act, parties seeking personal conduct, stay away, or residence exclusion orders must file an Order to Show Cause and Temporary Restraining Order and an Application and Declaration for Order (Domestic Violence). If custody or visitation orders are requested, parties must also file a Child Custody, Visitation and Support Request (DV-105) and a Child Custody and Visitation Order (DV-140).

The court will deliver a copy of the protective restraining order to the Sheriff for entry into the Department of Justice's computer system (CLETS). For the protective order to be enforced, the protected person must give a conformed, certified copy of the restraining order to the Office of the San Diego County Sheriff for service.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008, Rev. 1/1/2009)

Rule 5.4.2

Residence Removal Orders

Upon ex parte application, the court may issue a residence removal order pursuant to Family Code section 6321. If granted, a separate removal order (Order For Removal From Residence, SDSC D-072) directing the Sheriff to assist in the removal must be prepared and submitted to the court for signature. Two certified copies of the removal order are required by the Sheriff.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.3

Personal Conduct Orders

Upon ex parte application, the court may issue temporary personal conduct restraining orders pursuant to Family Code section 6320.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.4

Status of TRO When Hearing is Continued

Only the court may issue the TRO or continue the hearing on a domestic violence restraining order. TROs will not remain in effect during the continuance, absent a stipulation or court order. The moving party must submit Form DV-125 and Form EA-125 to the court, which if granted, would provide for the TRO to remain in effect pending the continued hearing. The party must then give the form to the Sheriff's office.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2009)

Rule 5.4.5

Restraint of Accounts

The court will not grant a temporary restraining order to enjoin the removal of funds or securities from financial institutions or securities firms unless there is notice to the opposing side or a declaration stating facts which show a clear danger of the dissipation of funds.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.4.6

Restraining Orders in Non-Domestic Violence Cases

In non-domestic violence cases where orders other than custody and personal conduct, stay away, or residence exclusion are requested, parties must file an Order to Show Cause, an Application for Order and Supporting Declaration, and Temporary Orders. (FL-300 & 305.) In non-domestic violence cases, the party must prepare a declaration on a separate sheet and attach it to the Application.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)